



Department of Energy

Idaho Operations Office
850 Energy Drive
Idaho Falls, Idaho 83401-1563

December 4, 2000

Charles Findley, Acting Regional Administrator
EPA - Region 10
1200 6th Ave.
Seattle, WA 98101

Stephen Allred, Director
Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

Beverly Cook
U.S. Department of Energy
Idaho Operations Office
850 Energy Drive
Idaho Falls, ID 83401

SUBJECT: Statement of Dispute, SFE-20 Tank, November 13, 2000 – (EM-ER-230-00)

- Reference: 1. "Statement of Dispute, SFE-20 Tank," DOE letter EM-ER-216-00, dated November 13, 2000
2. EPA letter, dated November 28, 2000, signed by Gearheard
3. Idaho Department of Environmental Quality letter, dated November 29, 2000, signed by Kelly

To the Dispute Resolution Senior Executive Committee:

After over two years of negotiation, on December 9, 1991, the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the State of Idaho (the Parties) signed the INEEL Federal Facility Agreement and Consent Order (FFA/CO) for cleanup of the INEEL under federal and state law. The agreement provided a procedural framework for remediation in accordance with the three Parties' authority under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), and the Idaho Hazardous Waste Management Act (HWMA) (FFA/CO Section 4.1(b)). Most importantly, the FFA/CO established a single, integrated process for cleanup that eliminated wasteful duplication and unnecessary conflicts. The approach to cleanup outlined in the FFA/CO is based on integrating the authorities of RCRA/HWMA and CERCLA into a single effective and efficient cleanup of the INEEL. FFA/CO Section V, and the Action Plan Section 1). As the Parties stated collectively in the response to public comments on the FFA/CO, "IDHW [the predecessor to DEQ] is a full participant in all cleanup decisions under the Agreement. All Parties believe that a single cleanup process is necessary. The

CERCLA/NCP process and guidance is more definitive than the current corrective action regulations." (Response to Comments on the FFA/CO, December 6, 1991, p.11).

However, in a departure from this integrated process, the Idaho Department of Environmental Quality (DEQ) is now attempting to add additional cleanup requirements into a cleanup plan that DEQ already agreed to. Simply put, DEQ is challenging the integrity of the Record of Decision for Waste Area Group 3 which includes the SFE-20 Tank agreed to by our three agencies by imposing inapplicable, conflicting, and redundant requirements from outside of our agreed-to process. We find this to be unacceptable. DEQ and EPA are able to make proposals for cleanup through review, comment, and ultimately through approval of DOE's plans and reports under the FFA/CO process. If DEQ and EPA are not satisfied with DOE's actions, then they may invoke dispute resolution. But it is not acceptable to DOE for DEQ (or EPA) to attempt to change cleanup decisions made under the FFA/CO, clearly covered by the FFA/CO, and in breach of the FFA/CO.

The enclosed Statement of Dispute (Dispute) was submitted on November 13, 2000, to the members of the Dispute Resolution Committee (DRC) in accordance with Paragraph 9.2 of the FFA/CO. On November 28, 2000, the EPA member of the DRC signed a letter (enclosed) to the other members of the DRC, in which it rejected the breach of the FFA/CO and jurisdictional concerns that are the essence of the Dispute, and concluded, based on that rejection, that the Dispute was not deserving of a hearing by the DRC. This position was echoed in a November 29 letter (enclosed) from the DEQ member of the DRC. These members of the DRC have thus ruled on the Dispute without giving the Dispute a hearing.

The FFA/CO, Paragraph 9.2(e), directs that "If the DRC is unable to unanimously resolve the dispute within the twenty-one (21) day period the written statement of dispute shall be forwarded to the Senior Executive Committee ("SEC") for resolution." Inasmuch as two members of the DRC have refused to have a meeting or any discussion on the Dispute, and have instead reached conclusions rejecting the substance of the Dispute without a hearing, it is clear that unanimous resolution of the Dispute has not occurred, and, the 21 days having expired, that the Dispute must now be submitted to the SEC.

We note that neither of the letters from the DRC members, nor the earlier letter of October 30, 2000, from DEQ, has responded to the specific points made in the letter from DOE-ID's Don Rasch of October 19, 2000. Specifically, they have provided no rebuttal to the several EPA policy guidance letters, and the statements in the Operable Unit 3-14 Record of Decision (ROD) signed by EPA and DEQ, which Mr. Rasch cited as authority for our position, to wit, that the SFE-20 Tank is not and never was a Treatment, Storage or Disposal (TSD) Unit, since it was shut down and sealed up several years prior to the November, 1980, effective date of the RCRA regulations for hazardous waste facilities, and prior to July 3, 1986, the applicable date for mixed waste facilities (See FFA/CO Section 6.5). Enclosed is a detailed chronology of the SFE-20 Tank, from its installation to the present. Neither have any of these communications from EPA or DEQ responded to the fact that both those agencies, in every instance in which the SFE-20 Tank was considered for more than a decade, have consistently treated it as a site that would be remediated under the FFA/CO rather than as a TSD Unit in need of a permit or interim status under RCRA/HWMA. DEQ's previous consistent position was reversed without justification only in August of 2000, with the communication from Mr. Monson requesting filing of a closure plan.

It continues to be the position of DOE-ID, supported by the unrebutted evidence in the Dispute, that the SFE-20 Tank has been and continues to be a matter solely under the purview of the FFA/CO; that to attempt to impose additional HWMA requirements outside of the FFA/CO is a breach of that agreement; that there is no jurisdictional basis for DEQ's request for a closure plan; that this activity is properly conducted under the authority of CERCLA and the FFA/CO; and that this Dispute is a proper matter for consideration under the dispute resolution provisions of the FFA/CO. The closure plan request, under threat of enforcement action, is an improper attempt to superimpose RCRA permit requirements for actively operated units onto the long-inactive SFE-20 Tank, and will only add redundant documentation to the costs of cleanup without adding value to the cleanup itself.

In answer to a question raised in the EPA letter, we would like to note that, in addition to the communications and meetings between DOE-ID and DEQ outlined in the Dispute, this issue was a topic of discussion in the regular program manager meetings between the three Parties to the FFA/CO, as well as in other meetings between representatives of the program managers.

Because the FFA/CO, Paragraph 9.2(f), prescribes a short time of 21 calendar days for consideration by the SEC, I suggest a meeting of the SEC members in Boise, Idaho, on December 18, 2000. If you need any further information on this matter, please contact Kathleen Hain at (208) 526-4392, or me at (208) 526-1148 or by FAX at (208) 526-0598, and via e-mail at hainke@id.doe.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry L. Lyle", is written over the typed name.

Jerry L. Lyle, Assistant Manager
Environmental Management
U.S. Department of Energy
Idaho Operations Office

Enclosures